

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:07cv330**

TAMMY A. McMAHAN,)	
)	
Plaintiff,)	
)	
Vs.)	ORDER
)	
MICHAEL J. ASTRUE, Commissioner of Social Security,)	
)	
Defendant.)	
)	

THIS MATTER is before the court upon the Commissioner's Motion for Remand Pursuant to Sentence Six of 42 U.S.C. § 405(g) (#19). Review of the Commissioner's motion and the pleadings reveals that good cause has been shown and that counsel for plaintiff's consents to the relief sought. See Melkonyan v. Sullivan, 501 U.S. 89, 101 n.2 (1991); Shalala v. Schaefer, 113 S.Ct. 2625, 2629 n.2. (1993). Remand is necessary because plaintiff submitted new evidence that is neither contained in the administrative record nor cumulative of the evidence contained in such record. Such new evidence also appears to be material in that it is relevant to the period at issue and might reasonably change the Commissioner's final decision. Upon receipt of this Order, the Appeals Council will remand this case to the Administrative Law Judge for incorporation of such evidence into the record, develop the record as needed, and issue a new decision.

ORDER

IT IS, THEREFORE, ORDERED that

- (1) the consent Motion for Remand Pursuant to Sentence Six (#19) is **GRANTED**;
- (2) plaintiff's Motion for Summary Judgment (#16) and Motion to Remand (#17) are **DENIED** without prejudice as moot;
- (3) pursuant to sentence six of 42 U.S.C. § 405(g), this case is **REMANDED** to the Commissioner in order for an Administrative Law Judge to conduct further review of the new and material evidence submitted by plaintiff in a manner not inconsistent with the instructions contained in this Order; and
- (4) the honorable Clerk of this Court is respectfully advised that in accordance with Sentence Six, no judgment shall be entered in this matter at this time inasmuch as the court retains jurisdiction on remand; however, the Clerk of this court is **GRANTED** leave to "administratively close" this matter if he deems appropriate to the proper administration of the court's docket.

Signed: April 1, 2008

Dennis L. Howell

Dennis L. Howell
United States Magistrate Judge

